

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

MICHAEL HENRY ANDERSON,

Plaintiff,

vs.

DAN DELTEN, TOM SMIKINS and
DAN JOHNSON,

Defendants.

CV 17-00063-H-BMM-JTJ
(CV 17-00070-H-BMM-JTJ)
(CV 18-00004-H-BMM-JTJ)

FINDINGS AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE
JUDGE

Pending is Defendants’ Motion to Dismiss Plaintiff Michael Anderson’s “First Amended Complaint” filed January 19, 2018. (Doc. 22.)¹ Defendants argue the January 19 Complaint is so devoid of factual and legal specificity that it fails to provide even the basic notice required by Rules 8 and 12(b)(6) of the Federal Rules of Civil Procedure. Specifically, they contend the January 19 Complaint does not include a statement of the relief requested and does not adequately identify the parties being sued. They argue that the individual claims are themselves so lacking in specificity that they generally do not give notice of the nature of the alleged wrong. (Mtn to Dismiss, Doc. 23.)

¹Although titled “First Amended Complaint”, the January 19, 2018 will be construed as Anderson’s Second Amended Complaint. The First Amended Complaint was filed December 8, 2017. (Doc. 12.)

Anderson did not file a response to the motion. Local Rule 7.1(d)(1)(B)(ii) provides that a “failure to file a response brief may be deemed an admission that the motion is well-taken.” Although many of the defects pointed out by Defendants could potentially be cured by amendment, Anderson did not respond to the motion. Accordingly, the Court will recommend that the motion be granted and the January 19, 2018 Amended Complaint (Doc. 14) be dismissed without prejudice.

This matter will proceed on Anderson’s First Amended Complaint (Doc. 12) filed December 8, 2017 as indicated in the Court’s January 17, 2018 Order directing service on Defendants (Doc. 13). Simultaneously herewith, the Court will issue a Scheduling Order setting a deadline for filing amended pleadings. Anderson must comply with this deadline if he intends to files another amended complaint.

Accordingly, the Court issues the following:

RECOMMENDATIONS

Defendants’ Motion to Dismiss January 19, 2018 First Amended Complaint should be GRANTED and the January 19, 2018 First Amended Complaint (Doc. 14) should be DISMISSED WITHOUT PREJUDICE.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

The parties may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.² 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 1st day of June, 2018.

/s/ John Johnston
John Johnston
United States Magistrate Judge

²Rule 6(d) of the Federal Rules of Civil Procedure provides that “[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a).” Therefore, since Anderson is being served by mail, he is entitled an additional three (3) days after the period would otherwise expire.